IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.03.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

WRIT APPEAL NO.1205 of 2000

1. The Secretary
   Vivekananda Higher Secondary School
   Thiruvedakam West
   Madurai District.

2. Murugesan .. Appellants

vs.

1. M. Nallaperumal

2. The Joint Director of School
   Education (H.S.C.)
   College Road, Chennai 6. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 22.06.2000 made in Writ Petition No.11385 of 1993 to set aside the Order passed by the Ist Respondent and direct the 2nd Respondent therein to appoint the Petitioner therein as Junior Assistant in the place of the 3rd Respondent.

For appellants : Mrs. Chitra Gomathy

For respondents: Mr. D. Hariparanthaman for R.1
Mr. R. Vijayakumar
Government Advocate for R.2

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JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal has been filed against the order of the learned single Judge dated 22.06.2000 made in Writ Petition No.11385 of 1993, in and by which the learned Judge, while allowing the writ petition, directed the School Management, second respondent therein, to appoint the

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writ petitioner, M. Nallaperumal, as Junior Assistant in the place of third respondent therein, viz., K. Murugesan.

2. For convenience, we shall refer the parties as arrayed in the writ petition.

3. The writ petitioner, M. Nallaperumal is the first respondent in the appeal. According to him, he belongs to Schedule Caste community. On 05.10.1985, the second respondent, Vivekananda Higher Secondary School (in short "the School"), appointed him as "Record Clerk" in their School. The qualification is SSLC completed for the post of "Record Clerk" and SSLC with eligibility for College course for the post of Clerk. The petitioner passed Pre-University course; hence, he is fully qualified for the post of Clerk. In the second respondent School, the highest post in non-teaching cadre is Junior Assistant. On 26.07.1990, the post of Junior Assistant fell vacant in the second respondent School due to the voluntary retirement of one D. Sekaran. According to the petitioner, the second respondent ought to have appointed him as Junior Assistant, because he is a senior most, eligible and suitable candidate in the feeder category, viz., "Record Clerk". The petitioner also sent a representation on 16.11.1990, seeking promotion, but there was no reply. He made an appeal and when the same was pending before the first respondent, the second respondent School filled up the post of Junior Assistant on 01.04.1991 and appointed the third respondent as if he was appointed from 14.12.1990. The first respondent, by order dated 26.04.1993, dismissed the appeal filed by the petitioner as time barred, since the appeal was filed after the lapse of two years. The said order was challenged by way of writ petition in W.P.No.11385 of 1993. The learned single Judge, by the impugned order, set aside the order appointing the third respondent as Junior Assistant in the second respondent School and directed the School Management to appoint the writ petitioner as Junior Assistant. Questioning the same, the School Management and the third respondent therein, viz., K. Murugesan have filed the above writ appeal.

4. Heard Mrs. Chitra Gomathy, learned counsel for the appellants, Mr. D. Hariparanthaman, learned counsel for the first respondent and Mr. R. Vijayakumar, learned Government Advocate for the second respondent.

5. The grievance of the petitioner M. Nallaperumal is that at the relevant time he was working as "Record Clerk" and he is fully qualified for being appointed as Junior Assistant and hence, there is no need to appoint the third respondent, viz., K. Murugesan, an outsider, in the post of Junior Assistant, which was vacant due to the retirement of one D. Sekaran. The writ petitioner made a representation and also preferred an appeal to the Joint Director of School Education, Chennai 6, first respondent herein on 16.03.1991. Pending appeal, the 2nd respondent filled the post of Junior Assistant on 01.04.1991.

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6. The order of the first respondent dated 26.04.1993, rejecting the appeal of the petitioner shows that the vacancy of Junior Assistant was filled up by selecting Murugesan on 14.12.1990. As per Section 43 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (in short "the Act"), the time prescribed for filing appeal to the appellate authority is 30 days or one month. Sub-section (1) of Section 43 of the Act makes it clear that after expiry of one month from the date on which the order appealed against was received by the party, no appeal will be entertained. Proviso to sub-section (1) of Section 43 of the Act further makes it clear that the appellate authority in its discretion may allow further time not exceeding one month for preferring any such appeal, if it is satisfied that the appellant has sufficient cause for not preferring the appeal in time. Sub-section (2) of Section 43 of the Act speaks about the procedure to be followed. Sub-section (3) enables the appellate authority to pass interlocutory orders depending upon the circumstances of the case.

7. As per sub-section (4), every appeal shall be disposed of as expeditiously as possible. As per sub-section (1), 30 days' period is to be reckoned from the date of receipt of copy of the order under challenge. It is true that the order of the first respondent does not show when the order appointing the third respondent was communicated to the writ petitioner; but, there is no obligation on the part of the School Management to communicate the order appointing the third respondent to the petitioner. In such a circumstance, if the petitioner is aggrieved by the order appointing the third respondent, he can prefer an appeal to the first respondent within 30 days either from the date of receipt of the order or from the date of his knowledge about such appointment. However, no such details are available in the order of the first respondent. Though the writ petitioner claims that he sent an appeal even on 23.02.1991, according to the Department, the first respondent, the same is not available in their Office.

8. It is also relevant to note that the appeal of the writ petition dated 16.03.1991 was disposed of by the first respondent / appellate authority only on 26.04.1993, i.e., after a period of two years, whereas sub-section (4) of Section 43 of the Act mandates the said authority to dispose of the appeal as expeditiously as possible. Taking note of all the above mentioned factual details and the statutory provisions referred to above, we are of the view that the appeal filed by the writ petitioner, M. Nallaperumal, is to be disposed of on merits, after affording an opportunity to him as well as to the third respondent K. Murugesan. Unfortunately, without concentrating on the relevant issue, the learned Judge without any details/materials, as to the qualification, eligibility, etc., issued a direction to the School Management for appointing the writ petitioner M. Nalllaperumal, as Junior Assistant in the place of third respondent K. Murugesan. The said direction and the ultimate order cannot be sustained; accordingly, the same is set aside. The matter is remitted to the first respondent, viz., the Joint Director

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of School Education (HSC) College, Road, Chennai 6, with a direction to restore the appeal filed by M. Nallaperumal, on his file and dispose of the same on merits and in accordance with law, after affording an opportunity to the writ petitioner as well as the third respondent. The said recourse shall be completed within a period of three months from the date of receipt of copy of this order.

The writ appeal is allowed on the above terms. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kh

To
1. The Joint Director of School
   Education (H.S.C.)
   College Road, Chennai 6.
+ 1 CC to Mr.A. Sankarasubramanian, Advocate SR NO 14187

W.A.No.1205 of 2000
Dated:22.03.2006

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